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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 856

JOHN L. LEWIS, HENRY G. SCHMIDT AND JOSEPHINE ROCHE, AS TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950, *Petitioners*

v.

MIKE MYHALYK, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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No.

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v.

MIKE MYHALYK, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

John L. Lewis, Henry G. Schmidt and Josephine Roche, as Trustees of the United Mine Workers of America Welfare and Retirement Fund of 1950 (hereinafter sometimes referred to as the "Trustees" and the "Trust Fund", respectively), Petitioners, pray that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania, which judgment was entered January 18, 1960, and rehearing denied on March 10, 1960.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Common Pleas of Allegheny County, Pennsylvania, sitting in banc, is unreported, and is printed in the Appendix at page 1a. The opinion of the Supreme Court of Pennsylvania is reported at 398 Pa. 390, A. 2d , and is printed at page 3a of the Appendix.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania was entered January 18, 1960 (Appendix p. 3a). Reargument was denied by that Court on March 10, 1960. The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. Section 1257 (3).

QUESTION PRESENTED[1]

This case involves the assertion of a right set up and claimed under the Labor-Management Relations Act, 1947, namely:

Does not implementation of the national labor policy expressed by the Labor-Management Relations Act, 1947, require that suits pertaining to the administration of an employees' welfare trust fund (including those to compel payments of benefits thereunder) set up pursuant to Section 302 (*c*) of that Act, as amended, 29 U.S.C. 186 (*c*), be brought in the federal court in the District in which such fund has its principal office?

[1] The same question is presented in *Lewis* v. *Parlarscak*, in which a companion petition for certiorari to the United States Court of Appeals for the Third Circuit is filed concurrently herewith.

STATUTE INVOLVED

The statutory provision involved is Section 302 of the Labor-Management Relations Act, 1947, Title 3, Chapter 120, 61 Stat. 157, 29 U.S.C., Section 186 (printed in Appendix, page 12a).

STATEMENT OF THE CASE

On December 12, 1958, Respondent (plaintiff below) filed this suit in the Court of Common Pleas of Allegheny County, Pennsylvania, seeking to compel Petitioners (defendants below) to declare him eligible to receive a pension from the Trust Fund. Jurisdiction was founded upon foreign attachment pursuant to Pennsylvania law. Petitioners appeared specially, contesting jurisdiction. After argument, the Court of Common Pleas dismissed Petitioners' preliminary objections and directed Petitioners to plead to the complaint. Upon appeal, the Supreme Court of Pennsylvania, by opinion and order of January 18, 1960 (Appendix, p. 3a) affirmed the order of the lower court and, subsequently, on March 10, 1960, by order, denied Petitioners' request for reargument.

This petition for certiorari and the companion petition for certiorari in *Lewis* v. *Pavlovscak*, filed concurrently herewith, raise a basic question concerning judicial review over the administration of employee welfare trust funds, created pursuant to Section 302 (*c*) (5) of the Labor-Management Relations Act, 1947, 29 U.S.C., 186 (*c*) (5) (hereinafter referred to as the "Act"), namely, whether jurisdiction over the administration of such welfare trust funds is vested in the federal district court at the principal office of such trust funds, or whether juricial review is to be opened

up to any state or federal court which can obtain service under local law.

The Trust Fund here involved was established pursuant to the provisions of Section 302.(c) (5) of the Act, 29 U.S.C., 186 (c) (5). It came into being as an inherent part of an industry-wide collective bargaining agreement, known as the National Bituminous Coal Wage Agreement of 1950, between the United Mine Workers of America and the thousands of bituminous coal operators located throughout more than 26 states. Petitioners, in accordance with that Agreement and the aforesaid Act, consist of a trustee appointed by the operators, one appointed by the Union, and one trustee selected by the operators and the Union. The parties to the Agreement specifically vested broad authority and discretion in the Trustees to manage the welfare Trust fund and promulgate appropriate regulations relating to, inter alia, the payment of pension benefits. That Agreement, in compliance with Section 302 (c) (5) of the Act, further provides that the detailed basis, upon which such payments are to be made from the Trust Fund, should be set down in writing.

In accordance with the Agreement, each operator is assessed a certain royalty for each ton of coal produced for use or for sale, which is then paid directly to the Petitioners and is deposited in a general account. Subsequently, certain of these funds are transferred to a separate trust known as the Pension Trust, as is required by the Act and Agreement.

The Trust Fund, including that portion of it relating to pension benefits, is administered solely in the District of Columbia, where its principal office has been located since its inception, as required by the Agree-

ment. All payments to the Trust Fund are made to Petitioners in the District of Columbia, all trust investments are solely in movables, administered in the District of Columbia, and all meetings of Petitioners (except two emergency meetings) have been held in the District of Columbia.

REASONS FOR GRANTING THIS WRIT[2]

The Orderly Implementation of the National Labor Policy Expressed by the Labor-Management Relations Act, 1947, Requires That Suits Pertaining to the Administration of an Employees' Welfare Trust Fund, (Including Payment of Benefits Thereunder), Established Pursuant to Section 302(c)(5) of That Act, as Amended, 29 U.S.C., 186(c)(5), be Brought in the Federal Court in the District in Which Such Fund Has Its Principal Office. This Is a Right Which Petitioners Claim Under This Statute.

The National Labor Relations Act, known as the Wagner Act, recognized the necessity for a unified national labor policy to prevent industrial strife. *N.L.R.B.* v. *Fainblatt* (1938), 306 U.S. 601, 83 L. Ed. 1014; *N.L.R.B.* v. *Jones & Laughlin Steel Co.* (1936), 301 U.S. 1, 22-23, 83 L. Ed. 893. This unified national labor policy was further implemented by the Labor-Management Relations Act, 1947. *Brooks* v. *N.L.R.B.* (1954), 348 U.S. 96, 99 L. Ed. 125, 134. By these acts, Congress, in order to protect interstate commerce from the adverse effects of labor-management disputes, undertook to regulate labor relations to the full extent of its constitutional power under the interstate commerce clause. *Amalgamated Assoc.* v. *Wisc. Emp. Rel. Bd.* (1951), 340 U.S. 383, 95 L. Ed.

[2] This section of this Petition is virtually the same as the corresponding section of the Petition in the companion case of *Lewis* v. *Parlorsoak*, contemporaneously filed herewith.

364; *Polish Nat. Alliance* v. *N.L.R.B.* (1944), 322 U.S. 643, 88 L. Ed. 1509, *Weber* v. *Anheuser-Busch* (1954), 348 U.S. 468, 480, 99 L. Ed. 546, 557, where this Court said:

> "By the Taft-Hartley Act, Congress did not exhaust the full sweep of legislative power over industrial relations given by the Commerce Clause. Congress formulated a code whereby it outlawed some aspects of labor activities and left others free for the operation of economic forces. As to both categories, the areas that have been pre-empted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds. Obvious conflict, actual or potential, leads to easy judicial exclusion of state action. * * *".

The Trust Fund was created pursuant to Section 302 (c) (5) of the Act, in which Congress set forth the requirements governing the creation and operation of welfare trust funds, epitomized as follows:

(1) that the payments to the fund are to be held in trust for certain specified purposes;

(2) that the detailed basis on which said payments are to be made be particularized in writing;

(3) that the employers and employees have equal representation in the administration of said fund, together with such neutral persons as they might choose;

(4) that in the event of a deadlock in the administration of such fund, the federal court at the situs (principal office) of said fund shall appoint an impartial umpire;

(5) that there be provision for an annual audit of the fund, the results of which are to be available for inspection at the situs (principal office) of the fund; and

(6) that payments intended to be used for pensions or annuities be placed in a separate trust and used for no other purposes.

Additionally, Congress specifically vested equitable jurisdiction in the federal district courts to restrain violations of Section 302. (Section 302 (e) of the Act). In *Arroyo v. United States* (1959), 359 U.S. 419, 424-425, 3 L. Ed. 2d 915, 919, this Court noted in relation to this section that:

> "When Congress enacted § 302 its purpose was not to assist the States in punishing criminal conduct traditionally within their jurisdiction, but to deal with problems peculiar to collective bargaining. *The provision was enacted as part of a comprehensive revision of federal labor policy in the light of experience acquired during the years following passage of the Wagner Act, and was aimed at practices which Congress considered inimical to the integrity of the collective bargaining process.*" (Emphasis supplied)

Since this Trust Fund exists as a direct product of the national labor policy, it follows that a body of federal law should be applied to it by the appropriate federal court.

Indeed, in light of the express language of Congress in Sections 302 (c)(5) and 302 (e), it is clear that Congress intended to establish a body of federal substantive law to govern the administration of welfare trust funds and vested judicial supervision of such

trust funds exclusively in the appropriate federal court. Admittedly, Congress did not spell out in minute detail how every trust fund is to be administered; but that apparent legislative forbearance should not permit the federal courts to abdicate their duty of judicial review to state courts, nor permit a federal court to apply state law. To the contrary, as this Court noted in *Textile Workers Union* v. *Lincoln Mills* (1957), 353 U.S. 448, 457, 1 L. Ed. 2d 972, 980-981:

> "The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. *Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy . . . Federal interpretation of the federal law will govern, not state law.*" (Emphasis supplied).

This approach is the only one consistent with the uniform effectuation of the over-all national labor policy. This Court, in recognition of the national labor policy, and, perforce, the necessity for the application of a uniform federal substantive law with regard thereto, has held that the federal courts under Section 301 of the Act must fashion a body of federal law for the enforcement of collective bargaining agreements affecting interstate commerce. *Textile Workers Union* v. *Lincoln Mills, supra.* The "paramount force of the federal law", as in all cases of pre-emption, is such that it prevails over inconsistent state law, whether expressed by an enactment of Congress itself or by the details of a collective bargaining agreement, which federal law empowers the parties to make. See

Local 24, I.B. of T.C.W. & H. v. *Oliver* (1959), 358 U.S. 283, 296-297, 3 L. Ed. 2d 312, 321-322.

The Trust Fund came into being in 1950 as an integral part of an industry-wide collective bargaining agreement. This Court, in its recent decision in *Lewis* v. *Benedict Coal Corp.* (Oct. Term, 1959, No. 18) U.S. , 4 L. Ed. 2d 442, recognized the close interrelationship between the activities of this Trust Fund and the mutual obligations of the parties to the Agreement from which it arose. This Court further stated in *Benedict, supra*, at p. 450, that the national labor policy was an important consideration when viewing this inter-relationship.

Therefore, if the necessary harmony between these two closely inter-related aspects of the national labor policy, namely, employee trust funds and collective bargaining agreements, is to be preserved, it is essential that judicial supervision of both be limited to the appropriate federal court, which shall review by applying a body of federal substantive law. At this moment, this important issue is in a state of confusion. Compare: *Barrett* v. *Miller* (D.C., S.D., N.Y., 1958), 166 F. Supp. 929 (recognizing that a body of federal substantive law is to be applied to Section 302 (*c*) (5) trust funds), with *Moses* v. *Ammond* (D.C., S.D., N.Y., 1958), 162 F. Supp. 866 (denying that any jurisdiction exists in the district courts over the supervision of welfare trust funds); and compare: this case (holding that Pennsylvania state courts have jurisdiction over this Trust Fund), with *Hobbs* v. *Lewis* (Supreme Court of Tennessee, 1954) 197 Tenn. 44, 270 S.W. 2d 352 (holding that the Tennessee courts have no jurisdiction over this Trust Fund, but that suits pertaining to its admin-

istration, such as the one at bar, must be brought in Washington, D. C.).

Having demonstrated that these matters should be litigated only in the federal courts, similar dangers of confusion and uncertainty require that the appropriate federal court should be the one at the situs or principal office of the trust fund. Uniformity of judicial review and supervision, so necessary for effective administration, is best achieved by limiting such review to that district court. Indication of the Congressional intent in this respect is found in Section 302 (*c*) (5), which specifically requires that deadlocks between trustees of a welfare trust fund, if not resolved within a reasonable time by the parties, be settled by the appointment of an "impartial umpire" selected by the district court of the United States for the district in which the welfare trust fund has its principal office.

Unless the federal courts of a single jurisdiction can adjudicate *all* the controversies which may arise regarding the administration of this Trust Fund, there will be no uniformity in its administration and the Trustees will be harassed by uncertainties and inconsistencies. Instead of all beneficiaries being dealt with alike, one applicant for a pension may receive very liberal treatment from the courts of his state, while another applicant may be held to a much more rigid standard by the courts of another state. A trust, *sanctioned* upon a national basis, will become one *regulated* on a state-to-state basis.

Mines and miners are located in at least 26 states. If litigation, such as is involved here and in the companion *Pavlovscak* case, arises in all of them, or in one or more of them, the risk of divergent decisions is ever

present. Pension claims, such as those involved in these two cases, do not turn merely on factual issues. There is a fertile field for judicial interpretation of the legal considerations which attach themselves to the facts.

The major eligibility provisions for a pension are that the applicant must (1) be 60 years of age or over at the time of filing his application; (2) have completed 20 years of service in *a classified job*, i.e., a job subject to the collective bargaining agreement in the coal industry, during the 30 years *immediately preceding his date of application*; (3) have retired after May 28, 1946, *following regular employment* in a classified job in the mine of an operator signatory to the agreement; and (4) have been regularly employed in a classified job in the coal industry *immediately prior to May 29, 1946*.[3]

According to the Douglas Subcommittee Report, p. 176, in one fiscal year denials of pension applications amounted to 16.7 percent (1182 denials) of those received, some of the reasons for denial revolving around the foregoing requirements. Indeed, this Report goes on to state (p. 177) that approximately a third of all denials in one year were on the ground that the applicant had not been employed in the industry "immediately prior to May 29, 1946".

There are numerous other instances of areas of controversy between pension claimants and the Trustees.

[3] See the complaint filed in the Court of Common Pleas; see, also, for a statement of these provisions, Final Report of Welfare and Pension Plans Investigation (p. 175) submitted to the Senate Committee on Labor and Public Welfare by its Subcommittee on Welfare and Pension Funds, (sometimes called the Douglas Subcommittee), pursuant to S. Res. 40 as extended by S. Res. 200 and S. Res. 232 (84th Congress). S. Rep. No. 1734, 84th Cong., 2d Sess.

For example, in considering employee status in a job subject to the bargaining unit, as required by Section 302 (c) (5) of the Act, the following factual situations occur:

(a) An employer is temporarily shut down, and the applicant has accepted what he contends is temporary employment elsewhere.

(b) An applicant was ill and not working prior to filing his application.

(c) An applicant was previously injured and on workmen's compensation prior to his application.

(d) Whether an applicant, working, e.g., as a maintenance man for company houses, watchman, or company clerk, is in a job subject to the bargaining unit.

Also, the phrase "immediately prior to May 29, 1946" calls for interpretation in cases wherein:

(a) A company closed down permanently or temporarily and applicant became unemployed.

(b) An applicant was laid off but remained on company panel.

(c) An applicant was previously injured and receiving workmen's compensation payments.

Also, the requirement that an applicant for a pension be employed within the bargaining unit for twenty years of the thirty years immediately preceding the date of application calls for a determination of whether the applicant was in such an employee status for the required period. In this connection, the following situations are encountered:

(a) The industry in some areas works only a part of the year.

(b) Many employees work intermittently rather than continuously.

(c) Whether all jobs during eligibility period were subject to the bargaining unit.

Thus, fortuitously, two pension applicants whose cases are such that they should be treated alike, may fare differently according to the state in which each may sue. One court might determine that an applicant was not in an employee status while out of the industry for a period of one year because of illness, while another court may treat an absence of one year to be only temporary and establish employee status in that case.

These examples could be multiplied, not only in relation to the pension claimants, but, as well, with respect to other benefits, such as hospital-medical, death and disaster payments of the instant Trust Fund; moreover other trust funds must, of necessity, encounter like problems. How would trustees deal with such divergent and conflicting views? Not only would they be compelled to treat two applicants differently, but which precedent would they use to deal with similar cases in the future? And, suppose a third applicant comes from a third state, which has not so far passed upon the question.

Aside from the substantive areas of controversy outlined above, there are many situations where divergent judicial views upon procedural matters would "play havoc" with the orderly administration of the Trust Fund. Several examples can be given, where a court not at the situs of the trust may make the following rulings: (1) De novo review, rather than inquiry into abuse of trustees' discretion; (2) permitting pension-claimant to seek removal of trustees as part of his

suit for a pension; (3) allowing class actions to be maintained; and (4) applying longer periods of limitation than as prescribed at the situs.

To resolve the foregoing dilemmas, this Court may search the authorities of the various states, in order to find the rule which best effectuates a uniform national labor policy. *Textile Workers Union* v. *Lincoln Mills*, *supra*, 353 U.S. at 457, 1 L. Ed. 2d at 980-981. It is obvious that the effectuation of such uniform policy requires that suits pertaining to the administration of a Section 302 welfare trust fund be brought in the district court at the situs (i.e., principal office) of such fund. It will be found that every court dealing with the instant problems, except the courts in Pennsylvania, has held that suits pertaining to the payment of benefits from the instant Trust Fund must be brought at its principal office or situs in Washington, D. C. *Hobbs* v. *Lewis*, *supra*; *Herr* v. *Lewis* (1954) (D.C. S.D. Ind.), Civil Action No. 576; *Kane* v. *Lewis* (1953) (Sup. Ct. N.Y.), 125 N.Y.S. 2d 544; *Fikes* v. *Fund* (1958) (Cir. Ct. 10th Judicial Circuit of Ala.), Civil Action No. 36362-X; *Luchetti* v. *Lewis* (1954) (D.C., D. Utah), Civil Action No. C 184-53; *Hickey* v. *Lewis* (1950) (Harlan Cir. Ct., Ky.).[1]

[1] The rulings in these cases were predicated on the elementary doctrine of trust law that suits pertaining to the administration of a trust must be brought at the situs of the trust. The basis of this doctrine was aptly stated in *Living Trust of Movables in the Conflict of Laws*, 45 Harvard Law Rev. 969:

> "The question to what court a trustee of a living trust is responsible in the matter of instructions and accounting is of much importance. Although it is not generally understood, *it must be clear that a trustee must be responsible to the courts of one state only; otherwise, conflicting instructions and differences as to accounts will make the administration of a trust impossible.* If one court is to give instructions and orders to a trustee and to approve his accounts, that court must clearly

In sum, uniform administration of Section 302 (c) (5) welfare trusts is an integral part, and necessary to the preservation, of labor-management stability which Congress sought to achieve in enacting the Labor-Management Relations Act, 1947 (29 U.S.C. 141, et seq.). Conflicting determinations as to eligibility for benefits from the instant Trust Fund by courts of the coal producing states will result in chaos and complete frustration of the Trustees in carrying out the mandate by which the Trust Fund was established under the Act. This will necessarily destroy labor-management stability and disrupt peace in the bituminous coal industry. Fixing the situs or location of the principal office of a Section 302 trust fund as the only place where controversies affecting its administration may be litigated, would contribute greatly to achievement of the purposes of the Act. The occasional inconvenience to a claimant is far outweighed by the damage sustained by a trust harried and racked by unequal and inconsistent treatment of its beneficiaries.

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be one of the state of the seat of the trust; and it has been held that only such a court can instruct, control or remove the trustee." (Emphasis supplied). See also: Restatement of the Conflict of Laws, Section 299.

CONCLUSION

For the foregoing reasons, it is submitted that this petition should be granted.

Respectfully submitted,

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April, 1960

APPENDIX

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

No. 2905 January Term, 1959

MIKE MYHALYK, *Plaintiff*,

v.

JOHN L. LEWIS, HENRY G. SCHMIDT, JOSEPHINE ROCHE, Trustees of the UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND and the UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND, *Defendants*,

and

CONSOLIDATION COAL COMPANY, *Garnishee*.

Before: MARSHALL and LEWIS, JJ.

Memorandum Opinion

LEWIS, J.

The plaintiff, a coal miner, began this action in assumpsit with the issuance of a writ of foreign attachment directed against funds held by the garnishee, a coal operator, and owing to defendant, United Mine Workers of America Welfare and Retirement Fund. This fund is created by an agreement between the mine operators and the United Mine Workers of America. The plaintiff is seeking a pension from the fund. This case is before us on the defendants' preliminary objections alleging lack of jurisdiction.

After a careful consideration of the briefs submitted, we are of the opinion that this case is ruled by *Stampolis* v. *Lewis et al.*, 186 Pa. Superior Ct. 285. In the *Stampolis* case, as in the case before us, the plaintiff began his action in assumpsit by foreign attachment and attached the funds of a garnishee coal operator. The Superior Court reversed this Court and held that the Fund is an unincorporated

association under the Pennsylvania Rules of Civil Procedure and that the lower Court had jurisdiction of the res caught by the writ of foreign attachment.

Defendants submit that the Supreme Court of the United States in the case of *United States* v. *Embassy Restaurant, Inc.*, 186 Pa. Superior Ct. 554, has in effect overruled the *Stampolis* decision. In that case, the Court had before it a claim against a bankrupt by trustees of a welfare fund similar but not identical to the one involved before us. In view of the great dissimilarity in the facts, we cannot agree with defendants' contention that the *Stampolis* case is overruled. In fact, the *Stampolis* decision is followed in *John Pavlovscak* v. *Lewis et al.*, Civil Action No. 16096 in the United States District Court for the Western District of Pennsylvania.

We are satisfied that we are bound to follow the decision of the Superior Court in the *Stampolis* case and for that reason we entered our order dismissing defendants' preliminary objections and directing them to answer.

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 149 March Term, 1959

MIKE MYHALYK

v.

JOHN L. LEWIS, HENRY G. SCHMIDT, JOSEPHINE ROCHE, Trustees of the United Mine Workers of America Welfare and Retirement Fund and the United Mine Workers of America Welfare and Retirement Fund, *Appellants*, (and Pittsburgh Consolidation Coal Company, *Garnishees*)

Appeal from Order of the Court of Common Pleas of Allegheny County, No. 2905 January Term 1959

Entered April 20, 1959

Opinion

Filed: January 18, 1960

JONES, B. R., J.

The basic issue in this appeal is the amenability of the United Mine Workers of America Welfare and Retirement Fund (herein termed Fund) to a writ of foreign attachment issued in Pennsylvania. The determination of this issue is of vast importance not only to the Fund but also to hundreds of bituminous coal miners, resident in Pennsylvania, who, in the event that the Fund is not amenable to such writ of foreign attachment in this state, would be compelled to present claims against the Fund in the District of Columbia.

Pursuant to the provisions of Section 302(c) of the Labor Management Relations Act of 1947[1] certain bituminous coal operators and the United Mine Workers of America

[1] Act of June 23, 1947, c. 120, Title III, § 302(c)(5), 29 U.S.C.A. § 186(c).

on March 5, 1950 entered into a written agreement which established the Fund. That agreement created the Fund as an "irrevocable trust" to be administered by three "trustees". Insofar as relevant, the stipulated facts are: (1) the office of the Fund—where its meetings are held and records maintained is in Washington, D. C.; (2) with the exception of the monthly royalties due from the coal operators, the assets of the Fund—all personalty—are located in Washington; (3) the Fund maintains two "area medical locations" in Pennsylvania—Johnstown and Pittsburgh—and numerous Pennsylvania residents have received and are receiving benefits from the Fund; (4) the Pennsylvania bituminous coal operators on the 10th of each month pay, by check, directly to the Fund's office in Washington all royalties due from them on coal mined during the preceding calendar month and such payments are deposited in the Fund's General Account in Washington; (5) the Fund has established in Washington another account known as the Pension Account utilized for the payment of Pensions and annuities to beneficiaries of the Fund and "from time to time the Trustees by formal action provide for and direct the transfer of certain sums of money from the General Account . . . . to the said separate Pension Account" to be used exclusively for the payment of pensions; (6) on numerous occasions in order to enforce the obligation of the coal operators to pay royalties into the Fund, the Fund has instituted legal proceedings in the Western and Middle District Federal Courts in Pennsylvania.

The *modus operandi* of the Fund is; the bituminous coal operators each month pay into the Fund forty (40¢) cents per ton for each ton of coal mined; from such moneys, the Fund makes disbursements (1) "for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or life insurance, disability and sickness insurance or acci-

dent insurance; (2) benefits with respect to wage loss not otherwise compensated for at all or adequately by tax supported agencies created by federal or State law; (3) benefits on account of sickness, temporary disability, permanent disability, death or retirement; (4) benefits for any and all other purposes which may be specified . . . .; and (5) benefits for all other related welfare purposes as may be determined by the Trustees . . . ."

Myhalyk, the appellee, a resident of Allegheny County, on December 12, 1958 caused a writ of foreign attachment, followed by a complaint, to be filed in the Court of Common Pleas of Allegheny County where in the Fund's three trustees and the fund were named defendants and the Pittsburgh Consolidation Coal Co., garnishee. Myhalyk's complaint averred, inter alia: (1) his place of residence and his membership in the United Mine Workers of America; (2) that the garnishee coal company had moneys in its possession due and owing to the Fund and to that extent the Fund had property whose situs was in Pennsylvania; (3) a statement of the requirements set up by the Fund's trustees which must be met by applicants for pension benefits together with an averment that Myhalyk met such requirements; (4) that, on July 20, 1952, Myhalyk applied for pension benefits and that the Fund has not only refused to pay such pension benefits but has even refused to accept his application for such benefits. Myhalyk's complaint sought a judgment against the Fund and the issuance of a direction to the Fund that he, Myhalyk, be paid a monthly pension of $100 beginning July 20, 1952. Myhalyk and the garnishee entered into a stipulation wherein the garnishee agreed that it had in its possession $15,000 due the Fund and Myhalyk agreed that the garnishee pay all amounts in excess of $15,000 to the Fund. On January 21, 1959, counsel for the Fund and its trustees entered an appearance *de bene esse* and filed preliminary objections raising the question of the jurisdiction of the Court of Common Pleas of Allegheny County. After the parties

had entered into a stipulation of facts, the Court below dismissed appellants' preliminary objections and that order is the subject of this appeal.

Appellants contend that the Fund is a trust, and, in view of Congress' ordination in the Labor-Management Act of 1947, supra, that a welfare fund be created and operated as a trust, the Pennsylvania courts must hold the Fund to be a trust; as a trust, the Fund and its trustees are not amenable to a writ of foreign attachment in Pennsylvania; in the event that the Pennsylvania courts assert jurisdiction, appellants are deprived of property without due process and equal protection of the law in violation of the Constitution of the United States.

Foreign attachment, an extraordinary process, can take place only within the framework of Rules 1251 et seq. of the Rules of Civil Procedure, 12 PS Appendix. Rule 1252 provides that foreign attachment may be issued to attach property of a defendant . . . . when (1) defendant is a non-resident individual, although present in Pennsylvania, (2) defendant is a partnership or unincorporated association without a regular place of business in Pennsylvania and the action is against defendant in its firm or association name, and (3) defendant is a foreign corporation or similar entity even though registered in Pennsylvania. To sustain a foreign attachment proceeding not only must non-residence and the situs of real or personal property within Pennsylvania be established (*Fairchild Engine & Airplane Corporation v. Ballanca Corporation*, 391 Pa. 177, 137 A. 2d 248) but the defendant must fall within one of the classifications embraced within Rule 1252, supra.

The identical problem herein presented was before the Superior Court in *Stampolis v. Lewis et al.*, 186 Pa. Superior Ct. 285, 142 A. 2d 248, alloc. ref. Supreme Ct., cert. den., 359 U.S. 907. Judge Ervin, speaking for the majority of that Court, stated (pp. 287, 288): "The writ was issued pursuant to Pa. R.C.P. No. 1251 et seq., which provide that foreign attachment may be issued to attach the

property of a defendant upon any cause of action at law or in equity in which relief sought includes a judgment or decree for the payment of money when the defendant is an unincorporated association without a regular place of business in the Commonwealth or is a foreign corporation or similar entity. Rule No. 2151 defines "association" as meaning an unincorporated association conducting any business or engaging in any activity of any nature whether for a profit or otherwise under a common name. Rule 2176 defines "similar entity" as any insurance association or exchange or any other association which is regarded as an entity distinct from the members composing the association. The word "association" is defined in Black's Law Dictionary, Third Edition, as: "The act of a number of persons in uniting together for some special purpose or business. The persons so joining. It is a word of vague meaning used to indicate a collection of persons who have joined together for a certain object." 7 C.J.S. § 1 sets forth that the word "association" is used to indicate a collection of persons who have united or joined together for some special purpose or business . . . . The term "association" is often used as synonymous with 'company' or 'society'."

Parlorsoak v. *Lewis et al.*, F. 2d. , (C.C.A. 3rd), (decided September 18, 1959) accepted the district court's interpretation of *Stampolis* as having "treated the [Fund] as a business unit suable in the same manner as an unincorporated association under Pennsylvania law" and stated that "the important thing is that the *Stampolis* decision is an authoritative Pennsylvania ruling that Pennsylvania procedural law treats this Fund, for purposes of suability and amenability to process, like an ordinary unincorporated association" and "It [Stampolis] treats the actual contacts of the Fund with Pennsylvania . . . . as sufficient to bring it within the reach of the local courts." *Parlorsoak* does not acknowledge as correct *Stampolis'* conception of the Fund as an entity suable and amenable to process, but accepts it as "Pennsylvania procedure for handling

suits against organized groups conducting business activity in that state." The importance of *Parlo Scale* is that it found "no constitutional objection to the position taken by Pennsylvania that this Fund may be sued in Pennsylvania as an unincorporated association doing business in that state" in that the stipulated facts indicated such substantial activity on the part of the Fund and such substantial direct impact of its activities in Pennsylvania as "to make it reasonable for the state to subject the entrepreneur to the jurisdiction of its courts."

Appellant takes the position that *Stampolis* overrules *Forrish* v. *Kennedy*, 377 Pa. 370, 105 A. 2d 67, and *Geron* v. *Kennedy*, 381 Pa. 97, 112 A. 2d 181. In neither *Forrish* nor *Geron* was the issue of the Fund's amenability to suit presented. The Fund in both cases was the Anthracite Health and Welfare Fund whose office is in Hazleton, Pa., and no question arose in either case concerning the jurisdiction of the court over the Fund. In both cases the Court dealt with the exercise of discretion on the part of the Fund's trustees—a matter of substantive, rather than procedural law. *Forrish* and *Geron* could coexist with *Stampolis* without any conflict, real or apparent.

Our problem is to determine the correctness of the ruling in *Stampolis*. In that connection it may be noted that our refusal of an allocatur in *Stampolis* is without significance. *Agoston* v. *Commonwealth of Pennsylvania*, 340 U.S. 844, 71 S. Ct. 9; *Kraemer* v. *Guarantee Trust & Safe Deposit Co.*, 173 Pa. 416, 419, 33 A. 2d 1047.

That the Fund *stipulated by the parties to be an "irrevocable trust"*—possesses all the legal attributes and characteristics of a trust is beyond question. The agreement which created the Fund arose as the result of Congressional action through the medium of the Labor-Management Act of 1947, supra, which permitted the creation and operation of such a Fund only as a trust. Other jurisdictions have recognized this Fund as a trust: *Ruth* v. *Lewis*, 166 Fed. Supp. 346 (D.C., D.C.); *Lewis et al.* v.

Quality Coal Corporation, 243 Fed. 2d 769 (C.C.A. 7); *Vance v. Miners Memorial Hospital Association, Inc., United Mine Workers of America Welfare and Retirement Fund et al.*, 161 Fed. Supp. 178 (D.C.W.D. Va.); *United Marine Division v. Essex Transportation Co.*, 216 Fed. 2d 410 (C.C.A. 3); *Van Horn v. Lewis*, 79 Fed. Supp. 541 (D.C., D.C.); *Hobbs v. Lewis*, 197 Tenn. 44, 270 S.W. 2d 352. An examination of the creation and method of operation of the Fund convinces us that the Fund is in all respects a bona fide trust and that John L. Lewis, Henry G. Schmidt and Josephine Roche are in fact trustees subject to various fiduciary duties which it is incumbent upon them to perform.

Under Rule 1252, supra, foreign attachment may be issued only against a defendant falling within the following categories: a non-resident individual, a partnership or an unincorporated association without a regular place of business in Pennsylvania and a foreign corporation or similar entity even though registered in Pennsylvania. Unless this trust falls within such categories, foreign attachment cannot issue.

Appellant urges that this Fund—a trust—falls neither within the category of an "unincorporated association" nor that of a "foreign corporation or similar entity" and, therefore, is not amenable to foreign attachment in Pennsylvania. After a careful examination of the circumstances surrounding the creation of this Fund and its *modus operandi* we are of the opinion that the Fund is not an "unincorporated association" as that term is employed in Rule 1252.[2] On the other hand, both within the legislative

[2] Such holding is not in conflict with *Stampolis*, supra, for a careful examination of that decision will reveal that its sole basis was "that the court below had jurisdiction of the res caught by the writ of foreign attachment". *Vance v. Miners Memorial Hospital Association, Inc., etc.*, supra, makes clear the distinction between this Fund and an "unincorporated association"

intendment of Rule 1252 and the definition of a "similar entity" in Rule 2176, this Fund is within the phrase "a foreign corporation or similar entity". Granted that the Fund is not a "corporation", it does have the status of an "entity" and it is "foreign" in that it was created in a jurisdiction other than Pennsylvania. It is an "entity" which bears such a similarity to a "foreign corporation" for the purposes sought to be achieved by Rule 1252 as to bring it within the scope of the legislative intent that it be amenable to foreign attachment. There is no more reason to hold a "foreign corporation" amenable to foreign attachment than to hold this Fund amenable to such process; the same rationale exists in both instances.

Appellant next urges that, if the Fund is amenable to foreign attachment, there is no "res" of the Fund within Pennsylvania. The thrust of this argument is that the royalties in the hands of the garnishee coal company are not earmarked for the payment of pension benefits because such royalty payments under the terms of the Fund are made to the General Account of the Fund and do not reach the Pension Account until the Fund's trustees, in the exercise of their discretion, so determine. Such a contention is without merit. The sole source from which any pension benefits are paid by the Fund is the royalty payments made by the coal operators to the Fund: absent such payments there would be no moneys available to pay the pension benefits, payment of which is one of the stated objectives of the Fund. Whatever may be the bookkeeping methods of the Fund and the method of allocation on the Fund's books of the royalty payments when received, the fact remains that part of the royalty payments when received from the coal operators is eventually utilized for the payment of pensions. To hold otherwise would ignore the objectives of the Fund and attribute to the trustees an arbitrary attitude unjustified and unwarranted by the actual experience of the operation of the Fund. An examination of the method of operation of the Fund, its stated purposes and

its terms of origin satisfies us that the royalty payments due the Fund by the garnishee coal company constitute a sufficient "res" of the Fund to justify the attachment of our jurisdiction in this matter.

Lastly appellant contends that the subjection of this Fund to the jurisdiction of the Pennsylvania courts would violate the United States Constitution. *Parlorscak*, supra, has fully answered this contention.

To grant this Fund an immunity from amenability to foreign attachment in this state would be unconscionable. The Fund was created for the purpose of promoting and providing for the welfare and wellbeing of miners who had worked in the bituminous coal fields and their families, a category which comprises literally thousands of residents of this state. If, as the appellant argues, the Fund is amenable only to the courts of the District of Columbia, then those for whom the Fund was created would have to process and litigate their claims in a forum far distant from their places of residence; the obvious consequence would be to impose upon them a harsh and unnecessary burden and necessitate the expenditure of considerable time and money on their part. Time and again when this same Fund seeks, through the federal courts, to make the coal operators pay their obligations into the Fund it comes into Pennsylvania. Now when those who are entitled to payment of welfare benefits from the Fund seek to enforce its obligations to pay such benefits the Fund objects to coming into Pennsylvania. No sound reason nor justification exists upon which to grant immunity to this Fund from amenability to the courts of this state.

Order affirmed.

29 USC, Section 186

Restrictions on payments to employee representatives; exceptions; penalties; jurisdiction; effective date; exception of certain trust funds

"(a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

"(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

"(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5)

with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing

pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities."

. . . . .

"(c) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 381 of Title 28 (relating to notice to opposite party) to restrain violations of this section, without regard to the provision of section 17 of Title 15 and section 52 of this title, and the provisions of sections 101-110 and 113-115 of this title."

. . . . .

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

NO. 856

JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, as Trustees of the UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950, Petitioners

v.

MIKE MYHALYK, Respondent

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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v.

MIKE MYHALYK, Respondent

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

MIKE MYHALYK, respondent herein, respectfully prays that the PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, filed by JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, As Trustees of the United Mine Workers of America Welfare and Retirement Fund of 1950, at the above number and term of this Honorable Court, be denied.

QUESTIONS PRESENTED

1. Should the PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA be dismissed because petitioners have raised, for the first time on

appeal, the singular question of assertion of right set up and claimed under the Labor-Management Relations Act, 1947, not raised in the Courts below?

2. Is the PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, filed by petitioners in this Honorable Court, premature?

STATEMENT OF CASE

Mike Myhalyk, on December 12, 1958, caused to be issued a Writ of Foreign Attachment under the Pennsylvania Rules of Civil Procedure. The Writ was duly served upon Pittsburgh Consolidation Coal Company as garnishee, said coal company stipulating that it would retain from remittances to defendant Fund $15,000.00 to be held to satisfy any judgment rendered in said action. A complaint in assumpsit was duly issued and served upon said garnishee. Defendants, petitioners herein, appearing specially and de bene esse, filed preliminary objections in the nature of a petition raising the question of jurisdiction. The parties stipulated relevant facts to aid the lower Court in discerning the true nature of the UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND which petitioners failed to provide this Honorable Court with. The preliminary objections were dismissed. The Supreme Court of Pennsylvania sustained the action of the lower Court in *Myhalyk v. John L. Lewis, et al.*, 398 Pa. 390, 158 A. 2d 305. Petitioners now seek to have this Honorable Court review the record below.

The United Mine Workers of America as a result of industry-wide collective bargaining entered into the National Bituminous Coal Wage Agreement of 1950

(hereinafter called the Agreement) with coal operators, wherein was created the United Mine Workers of America Welfare and Retirement Fund of 1950 (hereinafter called the Fund). Said Fund was to administer certain fringe benefits in the nature of pensions, hospital and medical benefits, unemployment and death benefits; all pursuant to rules to be promulgated by the "Board of Trustees." Respondent, plaintiff below, at the time of suit, was and still is a member of said union, was and still is of advanced age (69 years of age), poor and impoverished and virtually unable to do any remunerative work. Respondent, plaintiff below, had been continuously employed in the mining industry for thirty-five years and upon reaching the age of sixty-five years, did thereafter apply for pension benefits from said Fund and the application was refused and pension denied. Respondent, plaintiff below, complied with all rules and regulations of said Fund and provisions promulgated thereunder by the petitioners, defendants below. Respondent then brought the action in the Courts below to compel payment of pension benefiits.

REASONS FOR DENYING THE WRIT

1. The Petition for Writ of Certiorari to the Supreme Court of Pennsylvania Should Be Dismissed Because Petitioners Have Raised, for the First Time on Appeal, the Singular Question of Assertion of Right Set Up and Claimed under the Labor-Management Relations Act, 1947, Not Raised in the Courts Below.

The petitioners raised in the Supreme Court of Pennsylvania four questions: "1. Is the U.M.W.A. Welfare and Retirement Fund a Trust; 2. Where Congress has ordained that a welfare fund must be created and must operate as a trust (29 U.S.C. 186 (c)(5), is it within the competence of a Pennsylvania court nevertheless to rule that such fund must operate as unincorporated association?; 3. Are the Appellant Trustees of a foreign trust of movables amenable to a writ of foreign attachment in a Pennsylvania court, particularly since the separate pension trust res was not attached?; 4. Does the Pennsylvania court's assertion of jurisdiction violate the provisions of the 14th Amendment to the Constitution of the United States, in that it deprives Appellants of property without due process of law, and denies them equal protection of the laws?"

The singular question raised by petitioners in this Supreme Court of the United States was not raised in the courts below.

The reason is obvious. The proceedings below have not reached the stage where the merits of the case are on the record and the question raised by petitioners goes directly to the merits. Indeed, petitioners have not even filed an Answer to the Complaint filed in the lower court. Thus it is obvious why the question could not be

raised heretofore and cannot be raised now. It is unfortunate that petitioners did not confront the Supreme Court of Pennsylvania with the question now raised before this Supreme Court of the United States. The courts of the United States have repeatedly set forth that they will not review questions raised for the first time on appeal: *Artic Ice Machine Co. v. Armstrong County Trust Co.*, 192 F. 114, 116; *Thomas v. Kansas City Southern Ry. Co.*, 277 F. 708, 710.

This Supreme Court of the United States did deny a similar petition going to the merits in the case of *John L. Lewis, et al. v. Antonios G. Stampolis*, 359 U.S. 907.

By way of discussion, it would seem quite obvious that the Labor-Management Relations Act, Section 302, Title III c. 120, 61 Stat. 157, 29 U.S.C.A. 186, in no way creates any rights between union, employer and employee (union member). Rather, the Act is intended to prevent industrial strife in interstate commerce (see page 5 of petitioners' Petition). As stated by Senator Ball, 93 Cong. Rec. 4678 (1947) the sole purpose of the amendment was not to prohibit welfare funds, but to make sure that they are legitimate trust funds, used actually for the specified benefits to the employees of the employers who contribute to them, and that they shall not degenerate into bribes. Petitioners argue that state court review of their wealthy organization promotes industrial strife and is inimical to the integrity of collective bargaining. Suffice it to say that the state courts have for decades opened their doors to air disputes and complaints of union members and beneficiaries of welfare funds. The fact that Congress, to protect welfare funds directed that such funds be held in trust, did not and was not intended to deny state courts juris-

diction over welfare funds where their states have a direct and substantial interest in such funds.

It would appear that Congress in providing at section 186 (e) of said Act that federal courts have jurisdiction in injunction proceedings to enforce compliance with said act intended that jurisdiction in other areas of enforcement of rights in such welfare funds be left to the state courts. It would appear that Congress in providing at section 186 (c) (2) that payments between employers and employees by reason of legal proceedings anticipated state court action in welfare fund disputes and approved the activity of state court regulation.

It is significant that petitioners, strenously arguing for uniformity in dealings with it, failed to inform this Supreme Court of the United States that the Fund is not supervised by any court in the Nation. It is elementary law that one court will not take jurisdiction of a trust which is supervised by the courts in a sister state. Until the Fund submits itself to a Court for supervision of its trustees, its trust investments, its trust expenditures, its trust activities and its trust accounting, it cannot complain.

2. The Petition for Writ of Certiorari to the Supreme Court of Pennsylvania, filed by Petitioners in This Honorable Court, Is Premature.

As set forth in the preceding paragraphs the record before this Supreme Court of the United States contains no testimony, record or other indication of petitioners' contention. The only proceedings in the Court below was on a writ of foreign attachment and the only opinion of the Court below was whether or not the Court of

Common Pleas of Allegheny County, Pennsylvania, had any trust res before it upon which it could assert its jurisdiction. The Supreme Court of Pennsylvania, having before it the question of jurisdiction, has not ruled on the question of orderly implementation of Labor-Management Relations Act of 1947. Under such a heavy and lofty question the plight of the miserable coal miner is all but lost. Respondent questions whether it would implement the National Labor Policy, supposed by petitioners to be enunciated in the Labor-Management Relations Act of 1947, to require a union welfare fund beneficiary residing in New York City to travel to the United States District Court for the Southern District of Florida to file an action against a non-resident union welfare fund.

CONCLUSION

Respondent respectfully submits that the PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA should be denied.

Respectfully submitted,

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May, 1960

FILE COPY

IN THE

Supreme Court of the United States

October Term, 1959

No. 856

JOHN L. LEWIS, HENRY G. SCHMIDT AND JOSEPHINE ROCHE, AS TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950, *Petitioners*

v.

MIKE MYHALYK, *Respondent*

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

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IN THE

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October Term, 1959

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v.

MIKE MYHALYK, *Respondent*

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

PETITIONERS' REPLY BRIEF

Respondent, in his Answer to Petition for Certiorari, contends that this Court should deny the petition upon the ground that petitioners failed to raise in the courts below the question presented here. Petitioners submit that respondent is in error.

The question presented to this Court by the petition is whether suits pertaining to the administration of an employees' welfare trust fund created pursuant to Section 302(c)(5) of the Labor Management Relations Act, 29 U.S.C. 186(c)(5), must be brought in the fed-

eral court in the District of Columbia, the situs of the instant Fund.

From the inception of this suit, petitioners have urged that suits pertaining to the administration of this Fund must be brought in the federal court at its situs. Thus, in its petition raising questions of jurisdiction, filed in the Courts of Common Pleas of Allegheny County, Pennsylvania, petitioners asserted that the instant Fund was a trust fund created by Section 302(e)(5), and that the suit by respondent must be brought in the court at the situs of the Fund, to wit, the federal court at Washington, D.C. (Paragraphs 4 and 5 of the Petition or Preliminary Objections Raising Only Questions of Jurisdiction; R. 17a, 19a-20a.)

The Court of Common Pleas nevertheless held that the instant Fund was subject to the jurisdiction of Pennsylvania courts as an unincorporated association. (Appendix, Pet. for Cert. pp. 1a-2a)

Petitioners renewed their contention[1] in the Supreme Court of Pennsylvania, stating at pages 30-31 of their brief:

> "We have seen that Congress intended to authorize the creation of welfare and retirement trusts subject to judicial supervision, similar to that exercised over other inter vivos trusts of movables, and that the law, regarding inter vivos trusts of movables, requires that they shall be administered only by the court at the situs of the trust. It, therefore, follows that Congress must have intended a trust created pursuant to the authority of the Act to be responsible in matters of administration only to the court at the trust's situs.

[1] Respondent clearly recognized this position, and urged the contrary view upon the Supreme Court of Pennsylvania. (See p. 11 of respondent's brief before the Supreme Court of Pennsylvania.)

"This interpretation is fortified by the express language of Section 302(c)(5) of the Act. (29 U.S.C. 186(c)(5). Congress anticipated possible 'deadlock on the administration of such fund(s)' among the trustees and provided for the appointment of a neutral to break such deadlocks 'by the district court of the United States for the district *where the trust fund has its principal office.*' (Emphasis supplied). This provision is without regard to the residence of the Trustees, the location of the trust res and the residence of any of the beneficiaries or potential beneficiaries. It may be concluded therefrom, that Congress evinced a legislative intent that a trust permitted under this statute should be dealt with as any other trust of movables, in that the court at its situs should be solely responsible for the judicial regulation of its administration.

"The logic in concluding that jurisdiction over the administration of the trust is limited to the court at the situs is apparent."

The Supreme Court of Pennsylvania recognized petitioners' contention, stating:

"'Appellants contend that the Fund is a trust, and, in view of Congress' ordination in the Labor-Management Act of 1947, supra, that a welfare fund be created and operated as a trust, the Pennsylvania courts must hold the Fund to be a trust; as a trust, the Fund and its trustees are not amenable to a writ of foreign attachment in Pennsylvania; * * *.'" (Appendix, Pet. for Cert. p. 6a)

However, that Court also held that the instant Fund was subject to foreign attachment under the laws of Pennsylvania, but upon the basis of being akin to a "foreign corporation or similar entity". (Appendix, Pet. for Cert. pp. 9a-10a)

Respondent's criticism thus actually runs, not to whether petitioners have raised below the question herein presented, but rather, that petitioners did not emphasize the interrelationship of the instant Fund to the overall national labor policy. Petitioners did stress the inherent interrelationship between the instant Fund and the Labor Management Relations Act, 1947, and the expansion in emphasis in this Court is easily explained. This Court, in its recent decision in *Lewis* v. *Benedict Coal Corporation* (October Term, 1959, No. 18, decided February 23, 1960), ... U.S. ..., 4 L. Ed. 2d 442, recognized that the instant Fund is a trust fund closely related to the collective bargaining agreements between the United Mine Workers of America and the bituminous coal operators, and that the national labor policy is an "important consideration" when viewing this Fund. However, the *Benedict* decision was not handed down by this Court until after this case had been submitted to the Supreme Court of Pennsylvania.

Respondent urges that this Court should not grant certiorari because the Pennsylvania courts did not pass upon the administration of the Fund in light of the national labor policy. It is clear that the Supreme Court of Pennsylvania was aware of these factors, but chose to ignore them. (Appendix, Pet. for Cert. p. 11a) Jurisdiction in this Court cannot be defeated by such a guise.

As this Court stated in *Grand River Dam Authority* v. *Grand Hydro* (1948) 335 U.S. 359, 369-70, 93 L. Ed. 64, 72:

> "* * * * fact that the state court purported to rest its decision largely on state law does not eliminate our duty to consider the question to the ex-

> tent that it arises under federal law. * * * It is, of course, for us to examine whether questions of federal law were necessarily, although only impliedly, adjudicated by the state court."

Again, in *Kiefer-Stewart Co.* v. *Seagram* (1951) 340 U.S. 211, 214, 95 L. Ed. 219, 224, this Court stated:

> "Respondents also seek to support the judgment of reversal on other grounds not passed on by the Court of Appeals but which have been argued here both orally and in the briefs. These grounds raise only issues of law not calling for examination or appraisal of evidence and we will consider them."

Plainly this petition is not premature, as claimed by respondent. The question of jurisdiction was naturally at the threshold, and was raised accordingly. (So it was in *Stampolis* v. *Lewis*, 359 U.S. 907, certiorari denied sub. nom. *Lewis* v. *Stampolis*, No. 594 October Term 1958.) It is entirely separated from the merits of the case—the right to receive a pension from the instant Fund.

The petition for certiorari should be granted.

Respectfully submitted,

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